

REMARKS

Applicant respectfully requests reconsideration of the instant application in view of the amendments, herein, and the following remarks:

The following claims are *pending*: 41, 42 and 44-69.

The following claims have been *allowed*: 49-56.

The following claim has been *deemed allowable*: 43.

The following claims are *independent*: 41, 49, 57-60.

The following claims have previously been *withdrawn*: 15-19, 28-34, 36-38 and 40.

The following claims have previously been *cancelled* without prejudice or disclaimer:
1-14, 20-27, 35 and 39.

Please *cancel* the following claim without prejudice or disclaimer: 43.

Please *add new* claims 58-69 and please *amend* claims 41, 42, 45, 46, 48 and 57; although these claims have been amended herein to provide clarification, correct typographical inaccuracies and/or informalities, and/or to better track practical/commercial implementations/practices (hereinafter “amendment,” “amendments,” and/or “amended”), Applicant submits that the originally filed claims are patentable and reserves the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation/divisional application(s). Applicant submits that these new claims and/or claim amendments are supported throughout the originally filed specification and that no new matter has been added by way of these amendments.

Applicant thanks the Examiner for allowing claims 49-56 and for indicating that claim 43 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Objections

The Office Action has objected to claim 43 as being dependent on a rejected base claim. Applicant has incorporated aspects of claim 43 into independent claim 41 and canceled claim 43, without prejudice or disclaimer. As such, Applicant submits that the Office Action's objection to claim 43 has been overcome.

Claim Rejections - 35 U.S.C. § 112

The Office Action rejected claim 46 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention.

Applicant has amended claim 46 to further clarify the claim elements. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection and allowance of claim.

Claim Rejections - 35 U.S.C. § 103

The Office Action rejected claims 41, 42, 44, 45, 47, 48 and 57 under 35 U.S.C. § 103(a) allegedly, as being unpatentable over Nordlicht et al., US Patent Publication No. 2002/0194115 (hereinafter "Nordlicht"), and in further view of Securities Exchange Act of 1934, Rules 11Ac1-5 and 11Ac1-7 (hereinafter "Exchange Act").

Requirements to Establish Prima Facie Obviousness

The Supreme Court in *Graham v. John Deere Co. of Kansas City* prescribed that a *prima facie* showing of obviousness under 35 U.S.C. § 103 requires that, "the obviousness or nonobviousness of the subject matter [be] determined," and details further requirements, commonly referred to as "Graham factors," which include that "[1] the scope and content of the prior art [be] determined, [2] differences between the prior art and the claims at issue [be] ascertained, and [3] the level of ordinary skill in the pertinent art [be] resolved." *Graham*, 383 U.S. at 1, 17 (1966). To comply with the Graham factors, as introduced in *Graham* and reaffirmed in *KSR Intern. Co. v. Teleflex Inc.*¹, MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B) the difference or differences in the claim over the applied reference(s);
- (C) the proposed modification of the applied reference(s) to arrive at the claimed subject matter; and
- (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," (§ 2106 II(C), emphasis added) and, "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." (§ 2143.03, emphasis added). Applicant submits that the pending rejection has failed to

¹ The "[Graham] factors continue to define the inquiry." 550 U.S. 398 (2007).

consider “every limitation in the claim” and “[a]ll words in [the] claim” in judging the patentability of the claim against the prior art by mischaracterizing claim elements and/or over-generalizing the applied reference(s). As with this Office Action, when the Examiner mischaracterizes and/or provides references that are missing claimed elements, then the Examiner has failed to fulfill MPEP § 706.02(j) requirements **(A) and (B)**, and as a consequence, has failed to establish a *prima facie* case of obviousness. 35 U.S.C. § 103.

Missing Claim Element(s)

Applicant submits the cited references (taken alone or in combination) do not discuss, do not render obvious, and are in fact missing at least the following element(s) as recited, *inter alia*, in amended independent claim 41:

A processor-implemented method for monitoring and evaluating an option limit order, comprising:

...

analyzing the identified at least one of a trade-through and a trade-at transaction relevant to the option limit order to determine a quantity of contracts filled and a quantity of contracts included in the at least one of a trade-through and a trade-at transaction; and

generating a performance measure in accordance with the analysis by dividing the quantity of contracts filled by the quantity of contracts included in the at least one of trade-through and trade-at transaction.

Although, Applicant disagrees with the Office Action’s assertion that the previously pending claimed elements are shown in Exchange Act (Reference U, p. 22-23), Applicant has taken the Examiner’s suggestion into consideration and amended independent claim 41 by incorporating aspects of allowable dependent claim 43 into independent claim 41 to further clarify the claimed elements, and thereby rendering claim 41 allowable.

In view of the amendments, Applicant submits that claimed elements are not discussed or rendered obvious by Nordlicht or Exchange Act, taken alone or in combination. For example, Applicant submits that Nordlicht's trading system discusses comparing bid/ask orders and sellers and buyers to determine if each is in the other list, which is different from the claimed elements. Furthermore, Exchange Act which discusses regulating exchanges and broker-dealers also fails to discuss or render obvious the claimed elements.

As such, Applicant submits that amended independent claim 41 is in allowable condition and requests reconsideration and withdrawal of the rejections.

Although of different scope than independent claim 41, Applicant submits claims amended independent claim 57 is also patentable over the applied references for at least the reasons discussed with regard to amended independent claim 41. For example, amended independent claim 57 recites, *inter alia*:

An apparatus for monitoring and evaluating an option limit order, comprising:

... analyze the identified at least one of a trade-through and a trade-at transaction relevant to the option limit order to determine a quantity of contracts filled and a quantity of contracts included in the at least one of trade-through and trade-at transaction; and

generate a performance measure in accordance with the real-time analysis by dividing the quantity of contracts filled by the quantity of contracts included in the at least one of trade-through and trade-at transaction.

As such, Applicant submits that the applied references, taken alone or in combination, do not discuss or render obvious the claimed elements of independent claim 57. Accordingly,

Applicant respectfully requests reconsideration and withdrawal of the rejection and allowance of the claim.

Although of different scope than independent claim 41, Applicant submits claims amended independent claim 58 is also patentable over the applied references for at least the reasons discussed with regard to amended independent claim 41. For example, amended independent claim 58 recites, *inter alia*:

A processor-readable medium storing processor-issuable instructions to:

... analyze the identified at least one of a trade-through and a trade-at transaction relevant to the option limit order to determine a quantity of contracts filled and a quantity of contracts included in the at least one of trade-through and trade-at transaction; and

generate a performance measure in accordance with the analysis by dividing the quantity of contracts filled by the quantity of contracts included in the at least one of a trade-through and a trade-at transaction.

As such, Applicant submits that the applied references, taken alone or in combination, do not discuss or render obvious the claimed elements of independent claim 58. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection and allowance of the claim.

Furthermore, Applicant submits that newly added independent claims 59 and 60 are based on allowed claim 49 and are therefore also allowable.

Furthermore, claims 42, 44-48 and 61-69 which depend, directly or indirectly, from independent claim 41 are all patentable over the cited references (taken alone or in combination) for at least similar reasons as discussed above when identifying deficiencies in

the Office Action's application of the references with regard to amended independent claim 41. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of the claims.

CONCLUSION

Applicant asserts that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art to this Office Action (and/or any previous office action(s)) (hereinafter "Office Action(s)"). While many other claim elements and/or bases for rejection were not discussed, as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art, and Applicant reserves the opportunity to more particularly traverse, remark and/or distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to the Office Action(s)' objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to other Office Action(s) objection(s) and/or rejection(s) as to any other claim element(s), any such re-assertion(s) of remarks are not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim element(s), and no such commonality is admitted as a consequence of any such re-assertion(s) of remarks. Consequently, the reference(s) cited the Office Action(s) do not result in the claimed invention(s), there was/is no motivation, basis and/or rationale for such a

combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed invention(s) are not admitted to be prior art. Also, Applicant does not accept, admit, and/or concede to any assertions, (mis)characterizations (e.g., of claims, references, and/or otherwise), and/or Official Notice(s) in the Office Action(s). As such, Applicant does not concede that any claim element(s) have been anticipated and/or rendered obvious by any of the cited reference(s) and/or any Official Notice in the Office Action(s). Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 41, 42 and 44-69, all: overcome all rejections and/or objections as noted in the Office Action(s), are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17209-440CP1. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17209-440CP1.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
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